

EUROPEAN TRENDS IN JUDICIAL MEDIATION AND THEIR USE IN THE CZECH REPUBLIC

Abstract

This dissertation deals with the phenomenon of judicial mediation. In the first part, it defines the term of mediation as such and determines its essential and additional elements. Further, the text looks into the wide spectrum of cases in which this method of alternative dispute resolution can be applied. The author specifically points out that limiting its use to family matters is rather inappropriate. The following section systematically identifies the individual types, forms and methods of mediation so that each mediation can be customized for the respective case. Finally, the first part ends with a reflection on the current issues connected to criticism of mediation. These are the enforcement of international mediated settlement agreements, the potential conflict with access to justice and the binding nature as well as enforceability of mediation clauses including their stipulation in general terms and conditions.

The second part is an analysis of the use of judicial mediation in selected European countries – Italy, Germany, the Netherlands, Poland, Slovenia and Spain. Different approaches to the implementation of the mediation directive are described as well as techniques for the promotion of its use. The output of the analysis is the identification of factors with potential influence on the expansion and popularization of mediation. The authors considers the following ones the most common: speed and cost of dispute resolution, degree of institutional integration of mediation, reliability of legal framework, and awareness of interested parties. The last one later becomes the key for the author in the process to come, during which she designs a set of measures based on this factor in particular. An entire set of means for making mediation more attractive also emerges from the analysis. The author divides them into three categories – incentives, coercion and promotion. In the last part in connection with the proposal of measures, the author works again in particular with the last one.

The description of current state of mediation in the Czech Republic and its use by the judiciary form the content of part three. The current legal framework ranging from binding regulation to soft law documents is carefully examined. The author compiles the output of existing statistics related to mediation and at the same time critiques

the collection of data in this field, the research value of which remains very low. She further highlights and summarizes the present efforts regarding the promotion of mediation by individual mediators and their associations. This part aspires to present a complex image of the development of mediation in the Czech Republic since the adoption of the Czech mediation act, emphasize the progress made but also identify key areas in which we stay behind.

The last part proposes *de lege ferenda* possible adjustments and measures in particular in the area of judicial mediation in the Czech Republic which should ultimately lead to higher awareness about mediation as such and the spread of its use. In the introduction the author defines specific goals which are to be achieved by the implementation of the measures and argues that the ideal means is the use of the existing framework of judicial mediation. A short excursion into the world of circumstances influencing consumer behavior follows. Then, the basic principles of behavioral economics are presented. Subsequently, the author makes a selection of suitable subjects at which the measures should be aimed. The measures for all groups with influence on the consumer's choice of dispute resolution method, i. e. judges, legal counsel, mediators and finally the parties of the dispute themselves, follow. The part concludes with additional and other measures, again of mostly non-legislative nature, which can support the reaching of the set goal. The provided measures are not interdependent and therefore the implementation of one, which can be advisable from the viewpoint of researchers measuring the effectiveness, or all of them simultaneously is possible.

Key words: judicial mediation – judge mediation – mediation directive – implementation – international mediated settlement agreements – access to justice – mediation clause enforcement – behavioral economics – nudge